

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GUILLERMO TRUJILLO CRUZ,
Plaintiff,
v.
B. KIBLER, et al.,
Defendants.

Case No. 1:20-cv-01740-NONE-SKO (PC)

**FINDINGS AND RECOMMENDATIONS TO
DISMISS ACTION FOR FAILURE TO
EXHAUST ADMINISTRATIVE REMEDIES**

14-DAY DEADLINE

Plaintiff Guillermo Trujillo Cruz, a state prisoner proceeding *pro se*, initiated this action on December 10, 2020. (Doc. 1.) Plaintiff alleges that Defendants failed to protect him from an attack by another inmate on November 14, 2020. (*Id.* at 3, 5, 6.) Plaintiff's complaint is dated November 20, 2020—only six days after the subject incident. (*Id.* at 7.) Given this short timeframe, Plaintiff did not appear to have exhausted his administrative remedies prior to filing suit.

Therefore, on January 25, 2021, the Court issued an order to show cause why this action should not be dismissed for failure to exhaust. (Doc. 11.) Plaintiff filed a response to the order to show cause on February 11, 2021. (Doc. 13.) Plaintiff does not deny that he failed to exhaust. He instead contends that this action should not be dismissed because the California Department of Corrections and Rehabilitation (CDCR) has “failed to properly process all [grievances] from June 2019.” (*Id.*) The Court finds Plaintiff's argument unavailing. For the reasons set forth below, the

1 Court recommends that this action be dismissed.

2 **I. LEGAL STANDARD**

3 The Prison Litigation Reform Act (PLRA) provides that “[n]o action shall be brought with
4 respect to prison conditions under ... any ... Federal law ... by a prisoner confined in any jail,
5 prison, or other correctional facility until such administrative remedies as are available are
6 exhausted.” 42 U.S.C. § 1997e(a). Exhaustion of administrative remedies is mandatory and
7 “unexhausted claims cannot be brought in court.” *Jones v. Bock*, 549 U.S. 199, 211 (citation
8 omitted). Inmates are required to “complete the administrative review process in accordance with
9 the applicable procedural rules, including deadlines, as a precondition to bringing suit in federal
10 court.” *Woodford v. Ngo*, 548 U.S. 81, 88, 93 (2006). The exhaustion requirement applies to all
11 inmate suits relating to prison life, *Porter v. Nussle*, 534 U.S. 516, 532 (2002), regardless of the
12 relief sought by the prisoner or offered by the administrative process, *Booth v. Churner*, 532 U.S.
13 731, 741 (2001).

14 Generally, failure to exhaust is an affirmative defense that the defendant must plead and
15 prove. *Jones*, 549 U.S. at 204, 216. However, courts may dismiss a claim if failure to exhaust is
16 clear on the face of the complaint. *See Albino v. Baca*, 747 F.3d 1162, 1166 (9th Cir. 2014).

17 **II. DISCUSSION**

18 It is clear on the face of his complaint that Plaintiff failed to exhaust administrative
19 remedies prior to filing suit. Plaintiff nevertheless contends that this action should not be
20 dismissed because CDCR has “failed to properly process all [grievances] from June 2019.” (Doc.
21 13 at 9.) It is unclear what Plaintiff means by “failed to properly process,” but it *is* clear that he
22 does not mean that CDCR failed to respond to his grievances. Attached to his complaint are
23 responses from the CDCR Office of Appeals to two of Plaintiff’s prior grievances. (Doc. 1 at 12,
24 27.) CDCR affirmed the cancellation of one grievance in May of 2020, and it constructively
25 denied the other due to time constraints in April of 2020. (*Id.*) Plaintiff exhausted the claims
26 underlying the latter grievance.

27 The Supreme Court has outlined an exception to the exhaustion requirement where
28 administrative remedies are “unavailable.” *Ross v. Blake*, 136 S. Ct. at 1858-60. To be

1 “unavailable,” the administrative process must (1) operate as a “simple dead end,” (2) be so
 2 “opaque” as to be “incapable of use,” or (3) be thwarted by “prison administrators ... through
 3 machination, misrepresentation, or intimidations.” *Id.* at 1859-60. Plaintiff neither shows, nor
 4 suggests that either of these situations apply. Rather, his claim that CDCR has “failed to properly
 5 process” his grievances, coupled with examples where CDCR cancelled or denied his grievances,
 6 suggests that he complains of the fact that his prior grievances were not granted. However, the
 7 Supreme Court has not recognized a “futility” exception to the exhaustion requirement. *Booth*,
 8 532 U.S. at 741 n.6.

9 As long as an administrative remedy was available, Plaintiff was required to exhaust it
 10 prior to filing suit. Because he failed to do so with respect to the claims underlying this action,
 11 Plaintiff may not pursue this action. Even if he has raised claims that are serious and would
 12 otherwise entitle him to relief, “exhaustion is mandatory under the PLRA and ... unexhausted
 13 claims cannot be brought in court.” *Jones*, 549 U.S. at 211.

14 **III. CONCLUSION AND RECOMMENDATION**

15 Plaintiff failed to exhaust his administrative remedies prior to initiating this action.
 16 Accordingly, the Court **RECOMMENDS** that this action be **DISMISSED** without prejudice.

17 These Findings and Recommendations will be submitted to the United States District
 18 Judge assigned to this case, pursuant to 28 U.S.C. § 636(b)(1). **Within 14 days** of the date of
 19 service of these Findings and Recommendations, Plaintiff may file written objections with the
 20 Court. The document should be captioned, “Objections to Magistrate Judge’s Findings and
 21 Recommendations.” Failure to file objections within the specified time may result in waiver of his
 22 rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v.*
 23 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

24
 25 IT IS SO ORDERED.

26 Dated: **February 16, 2021**

/s/ Sheila K. Oberto
 27 UNITED STATES MAGISTRATE JUDGE
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